

(b) The Secretary of the Commission has the authority to rule on procedural matters set forth in 10 CFR 2.346.

(c) There are no restrictions on ex parte communications or on the ability of the NRC staff and the Commission to communicate with one another at any stage of the regulatory process, with the exception that the rules on ex parte communications and separation of functions set forth in 10 CFR 2.347 and 2.348 apply to proceedings under 10 CFR Part 2 for imposition of a civil penalty.

(d) The procedures set forth in 10 CFR 2.205, and in 10 CFR part 2, subparts C, G, L and N will be applied in connection with NRC action to impose a civil penalty pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, or Section 206 of the Energy Reorganization Act of 1974 and the implementing regulations in 10 CFR part 21 (Reporting of Defects and Non-compliance), as authorized by section 1312(e) of the Atomic Energy Act of 1954, as amended.

(e) The procedures set forth in 10 CFR 2.206 apply to a request by any person to institute a proceeding pursuant to § 76.70 to amend, revoke, or suspend a certificate of compliance or approved compliance plan, or for such other action as may be proper.

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6670, Feb. 12, 1997; 69 FR 2281, Jan. 14, 2004]

§ 76.74 Computation and extension of time.

(a) In computing any period of time, the day of the act, event or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday at the place where the action or event is to occur, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor holiday.

(b) Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may for good cause be extended or shortened by the Commission.

§ 76.76 Backfitting.

(a)(1) Backfitting is defined as the modification of, or addition to, systems, structures, or components of a plant; or to the procedures or organization required to operate a plant; any of which may result from a new or amended provision in the Commission rules or the imposition of a regulatory staff position interpreting the Commission rules that is either new or different from a previous NRC staff position.

(2) Except as provided in paragraph (a)(4) of this section, the Commission shall require a systematic and documented analysis pursuant to paragraph (b) of this section for backfits which it seeks to impose.

(3) Except as provided in paragraph (a)(4) of this section, the Commission shall require the backfitting of a plant only when it determines, based on the analysis described in paragraph (b) of this section, that there is a substantial increase in the overall protection of the public health and safety or the common defense and security to be derived from the backfit and that the direct and indirect costs of implementation for that plant are justified in view of this increased protection.

(4) The provisions of paragraphs (a)(2) and (a)(3) of this section are inapplicable and, therefore, backfit analysis is not required and the standards in paragraph (a)(3) of this section do not apply where the Commission or staff, as appropriate, finds and declares, with appropriately documented evaluation for its finding, any of the following:

(i) That a modification is necessary to bring a plant into compliance with a certificate or the rules or orders of the Commission, or into conformance with written commitments by the Corporation; or

(ii) That regulatory action is necessary to ensure that the plant provides adequate protection to the health and safety of the public and is in accord with the common defense and security; or

(iii) That the regulatory action involves defining or redefining what level of protection to the public health and safety or common defense and security should be regarded as adequate.

(5) The Commission shall always require the backfitting of a plant if it determines that the regulatory action is necessary to ensure that the plant provides adequate protection to the health and safety of the public and is in accord with the common defense and security.

(6) The documented evaluation required by paragraph (a)(4) of this section must include a statement of the objectives of and reasons for the modification and the basis for invoking the exception. If immediate effective regulatory action is required, then the documented evaluation may follow, rather than precede, the regulatory action.

(7) If there are two or more ways to achieve compliance with a certificate or the rules or orders of the Commission, or with written Corporation commitments, or there are two or more ways to reach a level of protection which is adequate, then ordinarily the Corporation is free to choose the way which best suits its purposes. However, should it be necessary or appropriate for the Commission to prescribe a specific way to comply with its requirements or to achieve adequate protection, then cost may be a factor in selecting the way, provided that the objective of compliance or adequate protection is met.

(b) In reaching the determination required by paragraph (a)(3) of this section, the Commission will consider how the backfit should be scheduled in light of other ongoing regulatory activities at the plant and, in addition, will consider information available concerning any of the following factors as may be appropriate and any other information relevant and material to the proposed backfit:

(1) Statement of the specific objectives that the proposed backfit is designed to achieve;

(2) General description of the activity that would be required by the Corporation in order to complete the backfit;

(3) Potential change in the risk to the public from the accidental release of radioactive material;

(4) Potential impact on radiological exposure of facility employees;

(5) Installation and continuing costs associated with the backfit, including the cost of plant downtime;

(6) The potential safety impact of changes in plant or operational complexity, including the relationship to proposed and existing regulatory requirements;

(7) The estimated resource burden on the NRC associated with the proposed backfit and the availability of such resources;

(8) The potential impact of differences in plant type, design, or age on the relevancy and practicality of the proposed backfit; and

(9) Whether the proposed backfit is interim or final and, if interim, the justification for imposing the proposed backfit on an interim basis.

(c) No certificate will be withheld during the pendency of backfit analyses required by the Commission's rules.

(d) The Executive Director for Operations shall be responsible for implementation of this section, and all analyses required by this section shall be approved by the Executive Director for Operations or his or her designee.

[59 FR 48960, Sept. 23, 1994, as amended at 62 FR 6671, Fed. 12, 1997]

Subpart D—Safety

§ 76.81 Authorized use of radioactive material.

Unless otherwise authorized by law, the Corporation shall confine its possession and use of radioactive material to the locations and purposes covered by the certificate and/or approved compliance plan. Except as otherwise provided, the certificate or approved compliance plan issued pursuant to the requirements in this part entitles the Corporation to receive title to, own, acquire, receive, possess, and use radioactive material in accordance with the certificate.

§ 76.83 Transfer of radioactive material.

(a) The Corporation may not transfer radioactive material except as authorized pursuant to this section.

(b) Except as otherwise provided and subject to the provisions of paragraphs (c) and (d) of this section, the Corporation may transfer radioactive material:

(1) From one component of the Corporation to another;